

Appeal of Ronald E. James

The issue for determination is whether appellant has established any error in respondent's proposed assessment.

On the basis of information from the California Department of Employment Development, respondent determined that appellant was required to file a return for 1979 but had not done so. Respondent subsequently requested of appellant that he file such a return, but he did not comply. A proposed assessment was then issued with penalties for failure to file and failure to file after notice and demand. Appellant protested, but did not file a valid return.

It is well settled that respondent's determinations of additional tax and penalties, other than the fraud penalty, are presumptively correct, and the burden is on the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Phyllis J. Johnson, Cal. St. Bd. of Equal., Aug. 17, 1982.) No error has been shown.

In support of his position that he is not required to file a return, appellant has merely recited the long and weary list of all-too-familiar **statutory** and constitutional "tax protester" arguments that have been considered by the **courts and rejected** as meritless many times. ('See Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) Furthermore, we are precluded by section 3.5 of article III of the California Constitution from determining that the statutes involved are unconstitutional or unenforceable, and it has been our consistent policy to decline to decide constitutional issues in appeals involving deficiency assessments. On the basis of the foregoing, the actions of respondent must be sustained.

Appeal of Ronald E. James

ORDER

Pursuant to the views expressed in **the** opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ronald E. James against a proposed assessment of personal income tax and penalties in the total amount of **\$2,278.50** for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of March , **1983**, by the State Board of Equalization, with Board **Members** Mr. Dronenburg, Mr. Collis, Mr. Nevins and Mr. Harvey present.

- - - - - _____, Chairman

Ernest J. Dronenburg, r _____, Member

Conway H. Collis _____, Member

Richard Nevins _____, Member

Walter Harvey* _____, Member

*For Kenneth Cory, per Government Code Section 7.9